

EL902461398US

PATENT APPLICATION

OUR FILE NO. 20010483.DIV



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re App : Ronald O. Bubar
S.N. : 09/535,067
Filed : March 23, 2000 : Art Unit 1761
For : LAMINATED PIZZA CRUST : Examiner T. Tran Lien

#12
12-04-01
TC 1700
DEC 8 2001
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Assistant Commissioner for Patents
Box CPA
Washington, D.C. 20231

PRELIMINARY AMENDMENT

Dear Sir:

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DEC 8 2001

TC 1700

Responsive to the Final Action dated July 31, 2001, submitted herewith is a Request for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d), a Request for Extension of Time and a Supplemental Declaration of the inventor, Ronald O. Bubar, along with photographic exhibits referred to therein.

Claims 12-20 remaining in the application have been rejected under 35 U.S.C. §103(a) as being unpatentable over the Paulucci Patent 4,842,882. In an earlier attempt to overcome this same rejection, applicant's former counsel submitted a first Rule 132 Declaration dated September 30, 1999, by Mr. Bubar, but the Examiner has deemed that Declaration not to be persuasive because of a lack of factual evidence to support the conclusionary statements made in it. The accompanying Supplemental Declaration provides the evidentiary support for the averments made in the first Declaration. As stated in Mr. Bubar's Supplemental Declaration, Exhibit 1 is a photograph of a cross-section of a slice of pizza whose laminated crust dough is as defined by Claims 12-20 currently pending in the present application. Exhibit 2 is a photo of a cross-section of a

slice of pizza whose crust is like that produced in a pressed crust process like that described in the Paulucci '882 patent. The difference in crust texture is readily apparent in the photographs of Exhibits 1 and 2. The crust as defined by applicant's product-by-process claims and shown in Exhibit 1 to Mr. Bubar's Supplemental Declaration reveals a layered, flaky texture similar to that of a croissant whereas the texture of the crust of Exhibit 2 is more bread-like with no evidence of layering but only open pores that have become compressed and soggy. The Examiner should also note the discoloration of the crust beneath the topping layer showing absorption of moisture into the crust in the photograph of Exhibit 2. No such pattern of absorption of moisture tending to make the crust soggy is revealed in the photograph of Exhibit 1.

As set out in paragraph 8 of the accompanying Supplemental Declaration, the photograph of Exhibit 1 shows that the crust resulting when a sheet of dough is first layered with margarine and then repeatedly folded and stretched, as set out in applicant's product-by-process claims 12-16. It produces an altogether different crust consistency than what results when a method like that described in "Example 6" of the Paulucci '882 patent is employed in producing a pizza crust. The reason for the difference is explained by Mr. Bubar in paragraph 9 of his Supplemental Declaration.

As regards "commercial success" as an indicator of non-obviousness, it is to be noted from paragraph 10 of the accompanying Supplemental Declaration that Luigino's, Inc., applicant's employer, does not use the Paulucci process in preparing pizza crust. Instead, it uses a process that produces the type of crust described and claimed in the present application. Luigino's Inc. produces literally thousands of frozen pizzas each day for sale through grocery store outlets nationwide.

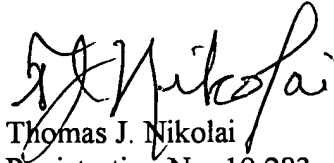
It is submitted that persons of ordinary skill in the art having the Paulucci '882 patent before them would not find it obvious to alter that process in the way invented by applicant to produce the improved pizza crust as presently defined by claims 12-20 of the instant application.

Favorable action, by way of the issuance of a Notice of Allowance is respectfully requested.

Respectfully submitted,

NIKOLAI & MERSEREAU, P.A.

Nov. 28, 2001

A handwritten signature in black ink, appearing to read "T. Nikolai", written over the printed name.

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